

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1098 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DIVISIONAL CONTROLLER

Versus

DALPATSINH NARSINH MAHIDA

Appearance:

MR YS LAKHANI for Petitioner

MR SUNIL C PATEL for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 19/11/98

ORAL JUDGEMENT

Rule. Heard learned counsel for the parties.
By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner, Gujarat State Road Transport Corporation (hereinafter referred to as the "Corporation") has challenged the award dated 5.11.1996 passed by the Second Labour Court, Surat whereby the learned judge having found the date of birth of the respondent as 9.9.1930 and the age of

superannuation as 60 years has directed to pay all consequential benefits for the period 31.3.1986 to 9.9.1990 by treating the said period of continuous service.

2. Necessary facts are that the respondent workman was conductor in Pastanji Desai Transport Company at Palsana. His service came to be transferred to the Corporation in the year 1954. As per the service condition of the Pastanji Desai Transport Company, the retirement age was 60 years. In the service record his date of birth was 18.3.1928. However, in 1961 the respondent produced school leaving certificate showing his date of birth as 18.3.1938. No objection was taken with respect to the said certificate. It appears that no correction was also made in the service record. Thus, considering 18.3.1928 as the date of birth the petitioner was given a notice dated 1.8.1985 that he will be attaining his superannuation age of 58 years on 31.3.1986. The respondent workmen filed a reply and contested that he is governed by the service condition of the Company and as such his superannuation age is 60 years. He further stated that as per school leaving certificate his date of birth is 18.3.1938. The learned judge relying on the revenue record Exh. 16 of Mamlatdar held that the date of birth of the respondent workmen is 9.9.1930. Further in view of the fact that the respondent workman was in the employment of a private Company and as per the terms and conditions the age of superannuation was 60 years.

3. It is contended by the learned counsel that the learned judge committed an error in not noticing the fact that the service of the petitioner was terminated on account of misbehaviour on 23.4.1954. However, he was reemployed on 19.12.1958 and as such he is governed by the service condition as provided under the relevant Regulations of the Corporation wherein the superannuation age has been proved as 58 years. I find substance in the contention. As the respondent was re-employed, he will be governed by the service Regulations of the Corporation which provides the age of superannuation as 58 years.

4. So far as the date of birth is concerned, the Labour Court has not accepted the date of birth given by the respondent i.e. 18.3.1938. The date of birth entered in the service book has also not been accepted. The learned judge has placed reliance on the census entry maintained by the Mamlatdar. I do not find any infirmity in taking the date of superannuation as 9.9.1930.

5. In view of the aforesaid, this Special Civil Application is partly allowed while maintaining the order of the Labour Court that the respondent workman's date of birth is 9.9.1930. The finding with respect to the superannuation age is modified to the extent that the age of superannuation in the case of the respondent is also 58 years. Thus, it is directed that the petitioner shall pay salary and consequential benefits to the respondent for the period 31.3.1986 to 9.9.1988 by treating the said period of continuous service. The payment shall be made within a period of three months from the date of receipt of the writ. The rest of the condition of payment of interest at the rate of 12 per cent per annum is upheld. Rule made partly absolute to the aforesaid extent.

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